



POLICE DEPARTMENT

December 12, 2019

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In the Matter of the Charges and Specifications :

Case No.

- against - :

2018-18681

Police Officer Michael Maguire :

Tax Registry No. 957797 :

25th Precinct :

-----X
At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Paul M. Gamble
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Kachina Brock, Esq.
Department Advocate's Office
One Police Plaza
New York, NY 10038

For the Respondent: John Tynan, Esq.
Worth, Longworth & London, LLP
111 John Street, Suite 640
New York, NY 10038

To:

HONORABLE DERMOT F. SHEA
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

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CHARGES AND SPECIFICATIONS

1. Said Police Officer Michael Maguire, while on-duty and assigned to the 25th Precinct, on or about January 10, 2017, while in New York County, said Police Officer Michael Maguire observed an injury sustained by Police Officer [REDACTED] who [REDACTED] [REDACTED] received treatment from EMS personnel and said officer failed to notify a supervisor to respond to Member of Service line of duty injury.

PG 205-05 PAGE 1 PARA 3, 4 & 5

LINE OF DUTY INJURY OR DEATH
OCCURRING WITHIN CITY

2. Said Police Officer Michael Maguire, while on-duty and assigned to the 25th Precinct, on or about January 10, 2017, while in New York County, failed to follow procedures for emotionally disturbed persons. *(As amended)*

PG 221-13 PAGE 4 PARA 25, 28, 29, 30, 31, 32

MENTALLY ILL OR EMOTIONALLY
DISTURBED PERSONS

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on October 31, 2019.

Respondent, through his counsel, entered a plea of Guilty to the subject charges, and testified in mitigation of the penalty. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having reviewed all of the evidence in this matter, I find mitigation is warranted, and recommend a penalty of four vacation days.

SUMMARY OF EVIDENCE IN MITIGATION

Respondent testified that at about 2250 hours on January 10, 2017, he and his partner were handling a domestic disturbance call when he heard the call for assistance regarding an Emotionally Disturbed Person ("EDP"). He completed the job he was working on and proceeded to [REDACTED]. Respondent was the operator that evening and his partner was the recorder. Upon his arrival on scene, Respondent saw at least one other unit. He observed an ambulance which had apparently taken on the emotionally disturbed person, Person A, as a passenger. Respondent testified that he observed that Person A was handcuffed and assumed, without any evidentiary support, that he had

been searched for weapons and/or contraband. Respondent agreed to accept the job and transport Person A to [REDACTED] Hospital. He drove his police vehicle to the hospital while his partner rode in the ambulance with Person A.

Before departing the scene, Respondent saw Police Officer [REDACTED] holding his head and asked him if he was okay; [REDACTED] replied that he was. Respondent admitted that he did not contact a supervisor to report that [REDACTED] had suffered a line of duty injury. It is undisputed that [REDACTED] sustained an injury to his head while struggling with Person A.

Once Respondent arrived at the hospital, he and his partner turned Person A over to hospital staff; he admitted that he did not perform a search of Person A's person prior to doing so. Respondent admitted further that he neither remained at the hospital to discuss any issues the attending physician may have had in treating Person A, nor did he complete an aided form. Respondent explained that he received another EDP call in his sector shortly before he was to end his tour of duty and he left [REDACTED] Hospital to attend to it.

Respondent offered evidence in mitigation of the penalty, in large part, by acknowledging his guilt of all charged misconduct. Having had the opportunity to consider Respondent's demeanor at the hearing, I find his testimony to have been candid and remorseful. In a post-hearing submission, he displayed what the Tribunal considers extraordinary acceptance of responsibility for his shortcomings that day. In his hearing testimony, as well as in his submission, Respondent acknowledged that while all of the responding police officers at the scene of the call were very junior (less than two years), he was the senior person present with just over two years of service. That Respondent would hold himself to this level of accountability at such an early point in his career with this Department speaks well of his character. In his submission, Respondent set forth all of the shortcomings of his performance that

evening in detail, then affirmed that he would endeavor to meet a higher standard of performance in the future.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 240 (1974). Respondent was appointed to the Department on January 7, 2015. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Department Advocate has recommended that Respondent receive a penalty of the loss of ten vacation days. In support of the recommended penalty, the Advocate cited *Disciplinary Case Nos. 2015-13772 & 2015-13774*, as well as *Disciplinary Case No. 2013-9878*. I find that the circumstances of this case are distinguishable from those cited by the Department Advocate and a departure from the precedent is warranted.

Disciplinary Case No. 2013-9878 was a negotiated settlement where a Respondent accepted a penalty of the loss of ten vacation days for failing to follow Patrol Guide procedures for reporting a line of duty injury incurred while transporting an EDP to the hospital and failing to remain at the scene of the incident. In that case, Respondent had transported an EDP to a hospital for treatment and was injured by the EDP while she was being transferred to the custody of hospital staff. Once the EDP was sedated, Respondent returned to the command. Respondent's supervisor contacted him by mobile phone while he was at the hospital to ascertain his whereabouts. During that telephone call, Respondent did not inform the supervisor that he had been injured and did not do so until a half-hour after that call in a text message. Respondent did not seek medical attention for his injury while he was at the hospital; it was only after he had returned to the precinct and was ordered to proceed by ambulance back to the hospital that he

received treatment for a sprained thumb. Respondent in that case had a formal disciplinary history and was an eighteen-year member of service.

In *Disciplinary Case Nos. 2015-13772 & 2015-13774*, Respondents lost ten vacation days after being found guilty at trial of: (1) failure to request a supervisor's response to the scene of an EDP call; (2) failure to complete an aided report and make appropriate entries in their activity logs regarding an EDP call; and (3) failure to prepare a complaint report after receiving information that a complainant was the victim of a crime. They responded to a radio transmission of an assault in progress and upon their arrival, were informed by a complainant that he witnessed a woman strike a young girl in the head with an object. Respondents made a visual examination of the girl, then sent her to a hospital by ambulance in the company of her mother. When they attempted to obtain pedigree information from the EDP, they realized that she was incoherent; they then called another ambulance and had her transported to the hospital. Neither Respondent prepared an aided report, a complaint report, or requested that a supervisor respond to the scene.

In this incident, Respondent responded to the scene of an altercation which had essentially concluded by the time of his arrival. Police Officer [REDACTED] and his partner had actually detained Person A, handcuffed him for transportation to the hospital and called an ambulance. Respondent's volunteering to transport him to the hospital sprang from his sense of professional responsibility for activity in his sector.

Respondent's shortcomings all seem to have sprung from his reliance upon the professionalism of other police officers. It was not unreasonable for him to believe that another officer would have searched Person A before placing him in handcuffs, or that Respondent's partner that evening, who rode in the ambulance with the patient, would have done so. It was also not unreasonable for him to believe that his partner, who was acting as recorder during that tour, would have completed the necessary aided form,

as it was his responsibility to do. Finally, it would not have been unreasonable for him to believe that either Police Officer [REDACTED] or his partner would have reported [REDACTED]'s injury to a supervisor. While it was not unreasonable for him to hold these beliefs, they amounted to speculation on his part, which was unreasonable.

Respondent had a non-delegable responsibility to ensure that any person in his custody has been properly searched for weapons and contraband. There was no evidence presented to suggest that his failure to do so in this case caused any actual harm but his lack of diligence subjected him and his fellow police officers to unnecessary risk.

In the view of the Tribunal, the imposition of a penalty of the loss of ten vacation days would overstate Respondent's actual culpability, under these particular circumstances, for the misconduct to which he has pled guilty. I find that his testimonial demeanor evinced genuine acceptance of responsibility and remorse. I therefore recommend a penalty of four vacation days as more appropriate and supported by the facts of the case.

Respectfully submitted,


Paul M. Garbale
Assistant Deputy Commissioner Trials

APPROVED


JAN 07 2020

DERMOT SHEA
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER MICHAEL MAGUIRE
TAX REGISTRY NO. 957797
DISCIPLINARY CASE NO. 2018-18681

Respondent was appointed to the Department on January 7, 2015. On his three most recent performance evaluations, he received one 4.0 overall rating of "Highly Competent" in 2016 and two 3.5 overall ratings of "Highly Competent/Competent" in 2015 and 2016. [REDACTED]

Respondent has no disciplinary record.

For your consideration.

Paul M. Gamble
Assistant Deputy Commissioner Trials